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To: Committee on Regulatory Reform
Re: SB 1088 - Direct shipment of wine by retailers
Hearing Date: September 22, 2016
From: Robert Epstein & James Tanford, Epstein Cohen Seif & Porter LLP

We are the attorneys who have successfully sued Michigan twice over its discriminatory wine shipping laws that gave favorable treatment to in-state businesses. In both *Granholt v. Heald* (wineries) and *Siesta Market v. Granholt* (retailers), the federal courts declared that it was unconstitutional for the State to allow in-state businesses to ship wine to consumers, but prohibit out-of-state businesses from doing so. We were therefore disappointed to see SB 1088 introduced that would enact the same law previously held unconstitutional that allows in-state retailers to ship wine to consumers, but prohibits out-of-state retailers from doing so. Will we really have to sue the State a third time?

The intersection between a state's 21st Amendment authority to regulate alcohol sales and the Commerce Clause's requirement that such regulations may not discriminate against out-of-state businesses is a complicated area of law. We have heard that there is misinformation floating around claiming that various loopholes, technicalities, or decisions in other states will somehow permit Michigan to enact a law allowing only in-state businesses to sell and ship wine directly to consumers. We suggest that you base your decision not on vague assurances made by lobbyists, but on the actual language in *Siesta Market*, which was made by the court that would hear a case challenging the new law. The court was absolutely clear:

IT IS FURTHER DECLARED that the statutes and regulations prohibiting out-of-state retailers from selling, delivering and shipping wine through interstate commerce directly to Michigan consumers is unconstitutional under the Commerce Clause.

IT IS FURTHER ORDERED that the State of Michigan and its officials are enjoined from prohibiting out-of-state wine retailers from selling, delivering and shipping wine through interstate commerce direct to consumers.

When a similar bill was being considered last spring in the House, another rumor was started that we had dismissed the *Siesta Market* case before the state could appeal because we realized we were going to lose. Not true. We dismissed the case at the request of the Michigan Attorney General because the law had been repealed, so the case was moot.

We urge you to resist the temptation to pass yet another wine shipping law that discriminates against out-of-state businesses. It cannot survive a court challenge.

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